118-68

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 215.

THE COUNTY COURT OF CAPE GIRARDEAU COUNTY, MISSOURI, AND WILLIAM HAGER, SAMUEL HITT, AND ROBERT SNIDER, THE JUDGES THEREOF, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES EX REL: JOHN T. HILL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED APRIL 10, 1883.

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INDEX.

	Original.	Print.
Citation	*a*	1
Service of citation	*b*	1
Writ of error	*c*	1
Return to writ of error	*d*	2
Caption	1	3
Information	1	3
Order for alternative writ of mandamus	4	4
Alternative writ of mandamus	6	5
Marshal's return	7	6
Motion to quash	8	6
Order overruling motion to quash	10	7
Return to alternative writ of mandamus	11	8
Demurrer to return	13	9
Motion for peremptory writ of mandamus	15	9
Motion for order to pay money	15	10
Order sustaining demurrer and for peremptory writ	17	10
Order to pay money	20	11
Order rescinding order for peremptory writ and to pay money	22	12

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	Original.	Print.
Order for peremptory writ and to pay money	23	12
Order for adjournment	26	14
Peremptory writ and order to pay money	27	14
Marshal's return	33	16
Order allowing writ of error	35	17
Bond	37	17
Clerk's certificate	39	18

a The United States of America to John T. Hill, relator, in case No. 1788 of U. S. *ex rel.* John T. Hill *vs.* County Court of Cape Girardeau County and William Hager, Samuel Hitt, and Robert Snider, judges thereof, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein The County Court of Cape Girardeau County and William Hager, Samuel Hitt, and Robert Snider, the judges thereof, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Treat, judge of the circuit court of the United States for the eastern district of Missouri, this 7th day of December, in the year of our Lord one thousand eight hundred and eighty-two.

SAMUEL TREAT,
Judge United States District Court, Eastern District of Missouri.

b UNITED STATES OF AMERICA, *Eastern District of Missouri:*

I return on this writ that I have executed the same by delivering a copy thereof to John B. Henderson, attorney of record of the within-named John T. Hill, relator, on the 7th day of December, 1882, at this office in the city of St. Louis, in the above district.

FELIX COSTE,
U. S. Marshal.
By GEO. N. STEVENS, *Deputy.*

Fees:

1 service	$2 00
1 mile	06
	$2 06

[Endorsed:] 1788. United States circuit court, eastern district of Missouri. United States *ex. rel.* John T. Hill *vs.* The County Court of Cape Girardeau Co. and the Judges thereof. Citation. Filed Dec. 7, 1882. M. M. Price, clerk.

c UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Missouri, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you, at the September term, 1882, thereof, between United States, at the relation of John T. Hill, relator, and The County Court of Cape Girardeau County, Missouri, and William Hager, Samuel Hitt, and

Robert Snider, the judges thereof, respondents, a manifest error hath happened, to the great damage of the said respondants, The County Court of Cape Girardeau County, Missouri, and William Hager, Samuel Hitt, and Robert Snider, the judges thereof, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 6th day of November, in the year of our Lord one thousand eight hundred and eighty-two.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

[Seal of the United States Circuit Court, Eastern District of Missouri.]

M. M. PRICE,
Clerk Circuit Court United States, Eastern District of Missouri.
By A. P. SELBY,
Deputy.

Allowed by—
SAMUEL TREAT, *Judge.*

d A copy of the within writ of error was lodged in my office for relator, John T. Hill, on November 6th, 1882.

M. M. PRICE,
Clerk of the Circuit Court United States,
for the Eastern District of Missouri.
By A. P. SELBY,
Deputy.

Return to Writ.

UNITED STATES OF AMERICA,
Eastern District of Missouri, } *ss:*

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at office in the city of St. Louis, this 11th day of December, A. D. 1882.

[Seal of the United States Circuit Court, Eastern District of Missouri.]

M. M. PRICE,
Clerk of said Court.
By A. P. SELBY,
Deputy Clerk.

[Endorsed:] No. 1788. United States circuit court, eastern district of Missouri. United States *ex rel.* John T. Hill *vs.* The County Court of Cape Girardeau Co. & the Judges thereof. Writ of error to the circuit court of the U. S., eastern district of Missouri.

1 UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

In the Circuit Court of the United States in and for the Eastern District of Missouri.

Be it remembered that on the 9th day of May, A. D. 1882, at a regular stated term of the circuit court of the United States in and for the eastern district of Missouri, begun and holden on the third Monday, the twentieth day of March, A. D. 1882, in the city of St. Louis, in said eastern district of Missouri, there was filed in the office of the clerk of said court a certain information for a writ of alternative mandamus in words and figures following, to wit:

Information for Mandamus.

EASTERN DISTRICT OF MISSOURI, *sct:*

To the honorable judges of the circuit court of the United States in and for the eastern district of Missouri.

Now comes John T. Hill and relates to the court that he is
2 a citizen of the State of New Jersey, and that the county of Cape Girardeau is a municipal corporation created by, and a citizen of, the State of Missouri, whose financial affairs are managed by a county court composed of justices who are citizens of said State; that on the 7th day of April, A. D. 1881, said relator recovered in the circuit court of the United States in and for the eastern district a judgment against the said county of Cape Girardeau for the sum of six thousand six hundred fifty-nine $\frac{80}{100}$ dollars, with interest at six per cent. per annum on $6,659.\frac{80}{100}$ dollars, and costs taxed at — dollars; that said judgment was recovered upon certain coupons issued by the said county of Cape Girardeau in payment for subscription made to the capital stock of the Cape Girardeau and State Line Railroad Company by the municipal township of Cape Girardeau and authorized by a vote of more than two-thirds of the voters of said township at an election held for that purpose in said township on the 13th day of April, 1869; that a demand has been made on said county court to pay the said judgment, interest, and costs,
or that they levy and cause to be collected upon all the real
3 estate and personal property in said township subject to taxation (including merchants' licenses) a tax according to law for the purpose of paying the said judgment, interest, and costs, and to pay the same, and that said demand has been refused; that said county has no property out of which said judgment, interest, and costs can be levied, and that the said relator has no other adequate remedy at law.

Wherefore the relator prays the court to order and issue a writ of mandamus directed to the said County Court of Cape Girardeau

County, and the Justices thereof, commanding them to levy, at the time of making the first annual levy after service of this writ, and cause to be collected, upon all the real estate and personal property in said Cape Giardeau township subject to taxation a tax for the payment of said judgment, with interest and costs, including the costs of this proceeding, and to pay the same according to law, and that said special tax be extended in a separate column on the regular tax-book on which are extended the State and county taxes.

JOHN T. HILL,
By J. B. HENDERSON & J. M. LEWIS,
Attorneys.

4 I, James M. Lewis, on oath, state that I am attorney for the relator, and that the matters and things alleged in the above information are true, as I verily believe.

JAMES M. LEWIS.

Subscribed and sworn to before me, this 8th day of May, A. D. 1882.

A. P. SELBY,
U. S. Com'r.

And afterwards, to wit, on the 9th day of May, A. D. 1882, the following further proceeding were had and appear of record in said cause, to wit:

Order for Writ of Alternative Mandamus.

UNITED STATES *ex rel.* JOHN T. HILL, Relator,
vs.
COUNTY COURT OF CAPE GIRARDEAU COUNTY AND THE JUDGES THEREOF, Respondents. } 1788.

Now comes the relator, by attorney, and presents to the court his information for a mandamus against said respondents to pay the judgment heretofore rendered in favor of said relator, and against said county, for the sum of six thousand six hundred [and] fifty-nine and $\frac{80}{100}$ dollars, with interest thereon, and costs. Upon con-
5 sideration whereof, and being fully advised in the premises, it is ordered that an alternative writ of mandamus issue herein, to be directed to the said respondents, commanding them to levy at the time of making the first annual levy after service of said writ, and cause to be collected upon all the real estate and personal property, including merchants' licenses, in Cape Girardeau township, in said county, subject to taxation, a tax for the payment of said judgment, with interest and costs, including the costs of this proceeding, and to pay the same according to law; and that said special tax be extended in a separate column on the regular tax-book on which are extended the State and county taxes, or that they show cause before this court on the first day of the next term thereof, on the third Monday, the 18th day of September next, why the refuse so to do.

And afterwards, to wit, on the 18th day of May, A. D. 1882, there was issued a writ of alternative mandamus in said cause, in words and figures following, to wit:

6 UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

I hereby appoint C. F. Betlen my special deputy to serve the attached writ.

FELIX COSTE,
U. S. Marshal, E. D. of Mo.

UNITED STATES OF AMERICA } sct:
Eastern District of Missouri, }

The President of the United States of America to the County Court of Cape Girardeau County, Missouri, and Wm. Hager, Sam'l Hitt, and Rob't Snider, the judges thereof, Greeting:

Whereas it has been represented to our circuit court of the United States in and for the eastern district of Missouri that John T. Hill, the relator, is a citizen of the State of New Jersey, and that the county of Cape Girardeau is a municipal corporation, created by, and a citizen of, the State of Missouri, whose financial affairs are managed by a county court, composed of judges who are citizens of said State; that on the 7th day of April, A. D. 1881, said relator recovered in the circuit court of the United States in and for the eastern district of Missouri a judgment against the said county of Cape Girardeau for the sum of six thousand six hundred & fifty-nine $\frac{80}{100}$ dollars, with interest at six per cent. per annum, and costs; that said judgment was recovered upon certain coupons issued by the said county of Cape Girardeau, in payment of a subscription made to the capital stock of the Cape Girardeau and State Line Railroad Company, by the county court of said county, for and on behalf of the municipal township of Cape Girardeau, in said county, and authorized by a vote of more than two-thirds of the voters of said township at an election held for that purpose in said township on the 13th day of April, A. D. 1869; that a demand has been made on said county court and the judges thereof to pay the said judgment, interest, and costs, or that they levy and cause to be collected upon all the real estate and personal property in said township subject to taxation, including merchants' licenses, a tax according to law for the purpose of paying the said judgment, interest, and costs, and to pay the same, and that said demand has been refused; that said county has no property out of which said judgment, interest and costs can be levied, and that the said relator has no other adequate remedy at law:

Now, therefore, you, the County Court of Cape Girardeau County and Wm. Hager, Samuel Hitt, & Robert Snider, the Judges thereof, are hereby commanded to levy, at the time of making the first annual levy after the service of this writ, and cause to be collected, upon all the real estate and personal property in said Cape Girardeau township subject to taxation, including all statements of merchants doing business within said township, a tax for the payment of said judgment, with interest and costs, including the costs of this proceeding; and that you cause the county clerk of your said county court to extend such special tax in a separate column on the regular

tax-book on which are extended the State and county taxes; and that you apply said tax when collected to the payment of said judgment, interest, and costs, or show cause on or before the first day of the next term of this court (the 18th day of September, 1882) why you refuse to do so.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the tenth day of May, A. D. eighteen hundred and eighty-two.

Issued at office, in the city of St. Louis, in said district, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.]

M. M. PRICE,
Clerk of said Court,
By A. P. SELBY,
Deputy Clerk.

6½ [Endorsed:] No. 1788. United States circuit court, eastern district of Missouri. United States *ex rel.* John T. Hill, relator, *vs.* the County Court of Cape Girardeau County and the Judges thereof, respondents. Alternative mandamus. Returnable to September term, 1882. Costs: Attorney, $——; marshal, $——; clerk, $——. Returned and filed May 18, A. D. 1882. M. M. Price, clerk.

7 On the back of the said writ of alternative mandamus was endorsed the marshal's return, in words and figures following, to wit:

Marshal's Return.

I return on this writ that I have served the same on the within-named, the county court of Cape Girardeau county and the judges thereof, by delivering to each one of said judges, to wit, Wm. Hager, Sam'l Hitt, and Robert Snider, our original writ of alternative mandamus, while said court was in session at Jackson, in Cape Girardeau county, in the above district, on the 15th day of May, 1882.

FELIX COSTE,
U. S. Marshal,
By C. F. BETTEN, *Deputy.*

And afterwards, to wit, on the 18th day of September, A. D. 1882, the defendant filed a motion to quash alternative writ of mandamus, in words and figures following, to wit:

8 *Motion to Quash Alternative Writ of Mandamvs.*

In the Circuit Court of the United States for the Eastern District of Missouri. September Term, A. D. 1882.

THE UNITED STATES *ex rel.* JOHN T. HILL, Relator,
vs.
THE COUNTY COURT OF CAPE GIRARDEAU COUNTY, MISSOURI and Wm. Hager, Samuel Hitt, and Robert Snider, the Judges thereof, Respondents.

Now come the County Court of Cape Girardeau County, Missouri,

and Wm. Hager, Samuel Hitt, and Robt. Snider, the judges thereof, and move the court to quash the alternative writ of mandamus herein issued, for the reasons—

1st. Said writ requires the performance of acts not authorized by law, especially in this, that said writ requires these respondents to levy, and cause to be collected, upon the real estate and personal property in Cape Girardeau township subject to taxation, including all statements of merchants doing business within said township a tax for the payment of a judgment in this court rendered, and
9 to which said writ purports to be auxiliary, when it is manifest from the record of this court in said cause that the debts merged in said judgment were coupons detached from bonds executed, issued, and delivered on the first day of July, A. D. 1869, by said county of Cape Girardeau for said township of Cape Girardeau, without other authority than is contained in an act of the general assembly of the State of Missouri, entitled "An act to facilitate the construction of railroads in the State of Missouri," approved March 23rd, 1868; that the only law authorizing the levy of taxes upon any personal property to pay any township bonds was enacted in 1871, after the periods at which the records herein and in the case to which this proceeding purports to be auxiliary, shows that the contracts therein involved were consummated.

That for the reasons aforesaid the law of the State of Missouri, entitled "An act to enable counties, cities, and townships to fund all or any part of their bonded debt, &c., and repealing all acts inconsistent with said acts printed in laws of Missouri at page 48 *et*
10 *sequitur*, and approved May 16th, 1879, could not in its repeal of said law of 1871 impair the obligation of relator's contracts.

HENRY A. CUNNINGHAM,
Att'y for Respondents.

And afterwards, to wit, on the 24th day of October, A. D. 1882, the following further proceedings were had in said cause and appear of record, to wit:

Motion to Quash Alternative Writ Overruled.

UNITED STATES *ex rel.* JOHN T. HILL, Relator,
vs.
COUNTY COURT OF CAPE GIRARDEAU COUNTY AND THE JUDGES THEREOF, Respondents. } 1788.

Now come the parties, by their attorneys, and the court, having considered the motion to quash the writ of alternative mandamus, orders that the same be overruled and that respondents have leave to file return to said writ within ten days.

And afterwards, to wit, on the 1st day of November, A. D. 1882, respondents filed their return to writ of alternative mandamus in words and figures following, to wit:

11 *Return to Writ of Alternative Mandamus.*

In the Circuit Court of the United States for the Eastern District of Missouri. Sept. Term, 1882.

THE UNITED STATES *ex. rel.* JOHN T. HILL, Relator,
vs.
THE COUNTY COURT OF CAPE GIRARDEAU AND THE JUDGES THEREOF, Respondents. } No. 1788.

Now come the respondents and, by leave of the court, make their return to the alternative writ of mandamus herein.

Respondents respectfully show that it is manifest from the record herein, and in the cause to which this proceeding is auxiliary, that the coupons merged in the relator's judgment were detached from bonds issued and delivered on the 15th of July, A. D. 1869, by the county of Cape Girardeau, for the township of Cape Girardeau, in said county, without other authority of law than that recited upon the face of each of the bonds, from which said coupons were detached.

Respondents respectfully show that an act, entitled an act to amend an act entitled an act to facilitate the construction of
12 railroads, &c., in the State of Missouri, approved March 10th, 1871, was, by general law of the State of Missouri, incorporated in the general statutes of said State, known as Wagner's Statutes, and was there designated as part of article 11 of chapter 37, entitled corporations.

That said article No. 11, and said chapter 37 of said general statutes, were, by secs. 3160, 3164, and 3168 of the revised statutes of Missouri of 1879, and by other general laws, repealed. That respondents recognize the fact that the repeal of the act of March 23, 1868, was, under the decisions of the Supreme Court of the United States, an impairment of relator's contract, and, therefore, here offer to comply with the provisions of said law by duly levying a tax upon all the real estate —— to taxation in the township of Cape Girardeau aforesaid, in an amount sufficient to pay relator's judgment, interest, and costs; but respondents respectfully show that, under the general laws of the State in force at the date of relator's judgment, and still in force, in the State of Missouri, respondents have no power or authority to levy taxes upon personal property
13 or merchants' licenses in the township of Cape Girardeau aforesaid, for the purpose of paying relator's judgment, because the only law authorizing such levy was made after the date of relator's contract, and had been duly repealed prior to the date of relator's judgment herein involved.

By HENRY A. CUNNINGHAM,
Their Attorney.

And afterwards, to wit, on the 1st day of November, A. D. 1882, there was filed a demurrer to return of respondent in words and figures following, to wit:

Demurrer to Respondent's Return.

U. S. *ex rel.* JOHN T. HALL

vs.

THE COUNTY COURT OF CAPE GIRARDEAU COUNTY.

Now comes the relator and demurs to the return of respondents in this case, and says that said return constitutes no defence to the application of relator for a pre-emptory writ.

And further, he says that said return is frivolous and wholly insufficient, and constitutes no reason or excuse by respondent
14 for failing to comply with the orders of this court requiring respondent to levy a tax on the real and personal property of the township to pay his judgment.

J. B. HENDERSON,
For Relator.

And afterwards, to wit, on the 1st day of November, A. D. 1882, the following further proceedings were had and appear of record in said cause, to wit:

UNITED STATES *ex rel.* JOHN T. HILL, Relator,
vs.
COUNTY COURT OF CAPE GIRARDEAU CO., &c., Respondents. } 1788.

Now comes relator and files motion for a writ of peremptory mandamus herein, and also files motion for an order on respondents to pay money to relator.

Said motion for writ of peremptory madamus is in words and figures following, to wit:

15 *Motion for Writ of Peremptory Mandamus.*

THE U. S. *ex rel.* JOHN T. HILL, Relator,

vs.

THE COUNTY COURT OF CAPE GIRARDEAU COUNTY.

Now comes the relator and prays the court for a peremptory writ of mandamus against respondents, commanding respondents to levy and collect a tax on and of the real estate, personal property, and merchants' licenses of Cape Girardeau township, in said county, at the time of levying the next annual tax in said county for State and county purposes in an amount sufficient to pay relator's judgment.

J. B. HENDERSON,
For Relator.

Said motion for order to pay money is in words and figures following, to wit:

Motion for Order to pay Money.

THE U. S. *ex rel.* JOHN T. HILL, Relator,
vs.
COUNTY COURT OF CAPE GIRARDEAU COUNTY, Respondent. } 1788.

Now comes relator and says that, after obtaining his judg-
16 ment in this case, he demanded payment thereof of respondent. That there was then, and is now, a sum of money in the county treasury subject to the said judgment sufficient to pay the same. That said money so in the treasury was theretofore collected from the tax-payers of said Cape Girardeau township for the purpose of paying certain coupons, of which those sued on this case are a part.

Relator, therefore, now comes and prays this court for an order on the respondent requiring the respondent and the judges of said court to pay to relator on his demand whatever sum of money as aforesaid may be in the treasury subject to the payment of said judgment which may have been collected of the tax-payers of said township for the purpose of paying coupons of interest on bonds theretofore issued by respondent for and on behalf of said township to an amount not exceeding the amount of relator's judgment, interest, and costs.

And relator prays that said county court may be required to make return to the order of this court in this behalf within thirty
17 days after service of notice hereof by relator.

J. B. HENDERSON,
For Relator.

And afterwards, to wit, upon the second day of November, A. D. 1882, the following further proceedings were had and appear of record in said cause, to wit:

Demurrer to Return Sustained and Peremptory Writ Ordered.

UNITED STATES *ex rel.* JOHN T. HILL, Relator,
vs.
COUNTY COURT OF CAPE GIRARDEAU COUNTY AND THE JUDGES THEREOF, Respondents. } 1788.

Now comes the relator, by his attorney, and submits to the court his demurrer to the return of respondents to the writ of alternative mandamus herein; and the court, having fully considered said demurrer and being fully advised in the premises, finds the law upon said demurrer for the relator; whereupon it is ordered that said demurrer be and it is sustained.

And the motion of said relator for a writ of peremptory man-
damus now coming on to be heard the court adjudges the
18 return of respondents to the writ of alternative mandamus herein to be insufficient in law, and orders that said motion be sustained and said writ allowed.

It is, therefore, now ordered and adjudged by the court that the

respondent, The County Court of Cape Girardeau County, Missouri, cause to be levied and collected in the same manner as county taxes are levied and collected a special tax to be assessed and levied on all the real estate and personal property lying and being within the township of Cape Girardeau, in the said county of Cape Girardeau, and including all statements of merchants doing business within said township for the purpose of paying the judgment of relator, or so much thereof as may remain unpaid at the time of making said levy, together with interest and costs, said judgment being for the sum of $6,659.80, dated on the seventh day of April, 1881, and bearing six per cent. interest from the date thereof, and costs.

And it is further ordered that the said levy of tax herein
19 ordered and directed be made by respondent at the time of making the annual levy of taxes for State and county purposes in the year 1883, and that the said special tax be extended on the regular tax book for said year and in a separate column on said book.

And the said respondent is hereby ordered and directed to take all measures to enforce the collection of said tax by suit, distraint, or otherwise, and when collected to pay the same to the relator or his attorney of record.

And it is further ordered that the clerk of this court cause a peremptory writ of mandamus to be issued under the seal of this court and delivered to the marshal of this district commanding respondents, The County Court of Cape Girardeau County aforesaid, to comply with the commands of this court as embodied in this order, and to make due return of obedience thereto.

And afterwards, to wit, on the same day, the second day of November, A. D. 1882, the following further proceedings were had and appear of record, to wit:

20 *Order to Pay Money.*

UNITED STATES *ex rel.* JOHN T. HILL, Relator,
vs.
COUNTY COURT OF CAPE GIRARDEAU COUNTY, Respondents. } 1788.

Now at this day comes the relator and presents to the court his motion heretofore filed praying that respondents be compelled to pay him whatever sum of money may have been heretofore collected by taxes levied and collected from the tax-payers in Cape Girardeau township, in said county of Cape Girardeau, to the extent of the amount of his said judgment, interest, and costs, and, the same being considered by the court, it is by the court ordered and adjudged that the respondent, The County Court of said County, so soon as said respondent shall have been served with a copy of this order, shall cause to be paid to relator or to his attorney of record whatever amount of money may now be, and remain, in the treasury of said county to the credit of said township, and all such sums as may then be in said treasury, and also all sums of money that may have

been heretofore collected within or for said township of Cape
21 Girardeau, in said county, for the purpose of paying interest coupons of certain bonds issued by respondent for and on behalf of said township, and of which the coupons sued by relator in this case constitute a part.

And it is further ordered that respondent make return to this court, showing compliance with this order, within thirty days after having been served with a copy thereof.

Ordered, That the foregoing order be, and the same is hereby, rescinded.

And afterwards, to wit, on said 2nd day of November, 1882, the following further proceedings were had, and appear of record in said cause, to wit:

22 *Order Rescinding Preceding Two Orders.*

All the entries herein in the cases—

UNITED STATES *ex rel.* JOHN T. HILL, Relator, *vs.* COUNTY COURT OF CAPE GIRARDEAU COUNTY *et al.*, Respondents.	No. 1788.

And in—

UNITED STATES *ex rel.* NINTH NATIONAL BANK OF THE CITY OF NEW YORK, Relator, *vs.* COUNTY COURT OF CAPE GIRARDEAU COUNTY *et al.*, Respondents.	No. 1970.

And in—

UNITED STATES *ex rel.* ELISHA FOOTE, Relator, *vs.* COUNTY COURT OF CAPE GIRARDEAU COUNTY *et al.*, Respondents.	1975.

Are hereby ordered to be cancelled, except as to so much thereof as sustains the demurrers respectively to respondents' several returns in each of said cases.

And afterwards, to wit, on the fourth day of November, A. D. 1882, the following further proceedings were had and appear of record in said cause, to wit:

23 *Order for Writ of Peremptory Mandamus and to Pay Money.*

UNITED STATES *ex rel.* JOHN T. HILL, Relator, *vs.* COUNTY COURT OF CAPE GIRARDEAU COUNTY AND THE JUDGES THEREOF Respondents.	1788.

Now at this day comes the relator and presents to the court his motion heretofore filed, praying that the respondent be compelled to pay him whatever sum of money may have been heretofore collected by

taxes levied and collected from the tax-payers in Cape Girardeau township, in said county of Cape Girardeau, to the extent of the amount of his said judgment, interest, and cost, and the same being considered by the court, it is by the court ordered and adjudged that the respondent, The County Court of said county, so soon as said respondents shall have been served with a copy of this order, shall cause to be paid to relator, or to his attorney of record, whatever amount of money may now be and remain in the treasury of said county to the credit of said township, applicable to the payment of the judgment herein; said amount being whatever sum has not been heretofore paid on judgment and writs thereunder,
24 *pro rata*, rendered upon coupons for which taxes have been collected for the coupons due of the same year which said judgments and writs, if any other than the relators in this case, unless of equal date therewith, are to be excluded in said *pro rata* computation.

And it is further ordered that respondent make return to this court showing compliance with this order for payment as aforesaid within thirty days after having been served with a copy hereof.

And it is further ordered and adjudged by the court that, in default of the payment to the plaintiff of the full amount of the principal, interest, and costs herein, *that* said County Court of Cape Girardeau County, in addition to its return as hereinbefore ordered, cause to be levied and collected in the same manner as county taxes are levied and collected, a special tax to be assessed and levied on all the real estate and personal property lying and being within the township of Cape Girardeau, in the said county of Cape Girardeau, and including all statements of merchants doing business
25 within said township, for the purpose of paying the judgment of relator, or so much thereof as may remain unpaid at the time of making said levy, together with interest and costs; said judgment being for the sum of $6,659.80, dated on the 7th day of April, 1881, and bearing 6 per cent. from the date thereof, and costs.

And it is further ordered that the said levy of tax herein ordered and directed be made by respondent at the time of making the annual levy of taxes for State and county purposes in the year 1883, and that the said special tax be *extended* on the regular tax-book for said year, and in a separate column on said book. And the said respondent is hereby ordered and directed to cause the collection of said tax by suit, distraint, or otherwise, as by law required, and when collected to pay the same to the relator or his attorney of record.

And it is further ordered that the clerk of this court cause a peremptory writ of mandamus to be issued, under the seal of this court, and delivered to the marshal of this district, commanding
26 respondent, The County Court of Cape Girardeau aforesaid, to comply with the commands of this court as embodied in this order, and to make due return of obedience thereto.

And afterwards on the same day, to wit, on said fourth day of November, A. D. 1882, the following proceedings appear of record, to wit:

Adjournment Order.

Ordered, That court be now adjourned without day.
(Signed) SAMUEL TREAT.

And afterwards, to wit, on the 14th day of November, A. D. 1882, there was issued out of the clerk's office of said court a writ of peremptory mandamus, in words and figures following, to wit:

27 *Peremptory Writ of Mandamus and Order to Pay Money.*

UNITED STATES OF AMERICA, } *sct:*
Eastern District of Missouri, }

The President of the United States of America to the County Court of Cape Girardeau County, Missouri, and William Hager, Samuel Hill, and Robert Snider, the judges thereof, Greeting:

Whereas it has heretofore been represented to our circuit court of the United States in and for the eastern district of Missouri, that John T. Hill is a citizen of the State of New Jersey, and that the County of Cape Girardeau is a municipal corporation, created by and a citizen of the State of Missouri, whose financial affairs are managed by a county court composed of judges who are citizens of said State; that on the 7th day of April, A. D. 1881, said relator recovered in the circuit court of the United States in and for the eastern district of Missouri, a judgment against the said County of Cape Girardeau for the sum of six thousand six hundred and fifty-nine and $\frac{80}{100}$ dollars, with interest at six per cent. per annum
28 and costs; that said judgment was recovered upon certain coupons issued by the said County of Cape Girardeau in payment of a subscription made to the capital stock of the Cape Girardeau and State Line Railroad Company, by the County Court of said county for and on behalf of the municipal township of Cape Girardeau in said county, and authorized by a vote of more than two-thirds of the voters of said township at an election held for that purpose in said township on the 13th day of April, A. D. 1869; that a demand has been made on said County Court and the Judges therof to pay the said judgment, interest, and costs, or that they levy and cause to be collected upon all the real estate and personal property in said township subject to taxation, including merchants' licenses, a tax according to law for the purpose of paying the said judgment, interest, and costs, and to pay the same, and that said demand has been refused; that said county has no property out of which said judgment, interest, and costs can be levied, and that the said relator has no other adequate remedy at law.

29 And, whereas, by your writ of alternative mandamus, issued on the tenth day of May, A. D. 1882, you, the county court of Cape Girardeau county, and William Hager, Samuel Hill and Robert Snider, the judges thereof, were commanded to levy at the the time of making the first annual levy, after the service of said writ, and cause to be collected, upon all the real estate and personal property in said Cape Girardeau township, subject to taxation, in-

cluding all statements of merchants doing business within said township, a tax for the payment of said judgment, with interest and costs, including the costs of said proceeding, and that you cause the county clerk of your said county court to extend such special tax in a separate column on the regular tax book on which are extended the State and county taxes; and that you apply said tax, when collected, to the payment of said judgment, interest and costs; or that you show cause on or before the first day of the next succeeding term of this court (the 18th day of September, 1882) why you refused to do so.

And, whereas afterwards, to wit, on the fourth day of No-
30 vember, 1882, at a regular stated term of our said circuit court, it was adjudged that you had returned no sufficient cause why you had refused to obey said writ of alternative mandamus; and the said relator now praying that you, the said respondents, be ordered to pay to him whatever sum of money may have been heretofore collected from the taxpayers in Cape Girardeau township, in your said county of Cape Girardeau, to the extent of the amount of his said judgment, interest and costs.

Now, therefore, you, the county court of Cape Girardeau county, Missouri, and William Hager, Samuel Hill and Robert Snider, the judges thereof, are commanded forthwith to be cause to be paid to said other John T. Hill, or to John B. Henderson, Esquire, his attorney of record, whatever amount of money may now be and remain in the treasury of your said county, to the credit of said township of Cape Girardeau, applicable to the payment of the judgment heretofore recovered herein; said amount being whatever
31 sum has not been heretofore paid on judgments and writs thereunder, *pro rata*, rendered upon coupons upon which taxes have been collected for the coupons due of the same year, which said judgments and writs, if any other than the relator's herein, unless of equal date herewith, are to be excluded in said *pro rata* computation; and do you make due return to our said circuit court showing compliance with this order for payment as aforesaid, within thirty days after having been duly served with this our writ.

And you, said respondents, the County Court of Cape Girardeau County, and William Hager, Samuel Hill, and Robert Snider, the judges thereof, are further commanded that in default of the payment to said relator of the full amount of the principal, interest, and costs herein, in addition to the return, as hereinbefore ordered, you cause to be levied and collected in the same manner as county taxes are levied and collected a special tax to be assessed and levied on all the real estate and personal property lying and being within the township of Cape Girardeau, in said county of Cape Girar-
32 deau, and including all statements of merchants doing business within said township, for the purpose of paying the judgment of relator, or so much thereof as may remain unpaid at the time of making said levy, together with interest and costs.

And you and each of you respondents herein are further commanded that you cause said levy of tax herein ordered and directed to be made at the time of making the annual levy of taxes for State and county purposes in the year 1883; and that you cause the said

special tax to be extended on the regular tax-book for said year and in a separate column on said book; and you are further ordered and directed to cause the collection of said tax by suit, distraint, or otherwise, as by law required, and, when collected, to pay the same to relator herein or his attorney of record.

And do you certify due and perfect obedience of this writ to our said circuit court on the first day of the next term thereof, to be held at the city of St. Louis on the third Monday, the 19th day of March, A. D. 1883.

33 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 14th day of November, A. D. eighteen hundred and eighty-two.

Issued at office in the city of St. Louis, in said district, under the seal of said circuit court the day and year last aforesaid.

[SEAL.]

M. M. PRICE,
Clerk of said Court.
By A. P. SELBY,
Deputy Clerk.

On said writ was endorsed the marshal's return in words and figures following, to wit:

Marshal's Return.

I hereby appoint Jas. C. Murdoch, my special deputy, to serve this writ.

St. Louis, Nov. 16th, 1882.

FELIX COSTE,
U. S. Marshal.

UNITED STATES OF AMERICA,
Eastern District of Missouri:

34 I return on this writ that I have served the same on the within-named defendants, the County Court of Cape Girardeau county and the judges thereof, William Hager, Samuel Hill, and Robert Snider, by delivering to each of them one original writ of peremptory mandamus on the 20 day of November, 1882, in Cape Girardeau county, in the above district, while said county court was in session.

FELIX COSTE,
U. S. Marshal.
By JAMES C. MURDOCH,
Special Deputy.

Sworn to and subscribed before me this 20th day of November, 1882.

[Cape Girardeau County Court Seal.]

G. C. PEPPER,
Clk Co. Court.

And afterwards, to wit, on the seventh day of December, A. D. 1882, the following proceedings were had before the Honorable Samuel Treat, judge, at chambers, and appear of record in said case, to wit:

35 *Writ of Error Allowed.*

UNITED STATES *ex rel.* JOHN T. HILL, Relator,
vs.
COUNTY COURT OF CAPE GIRARDEAU COUNTY AND THE JUDGES THEREOF, Respondents. } 1788.

Now come the defendants, by Henry A. Cunningham, Esquire, their attorney, and present to the Honorable Samuel Treat, judge, a writ of error to remove this cause to the Supreme Court of the United States, and a citation citing and admonishing the said relator to be and appear at a Supreme Court of the United States, at the next term thereof, on the second Monday of October next, which said writ of error is allowed and said citation signed; and the said respondents also present to the judge their bond in the penal sum of one thousand dollars, which bond is approved and ordered
36 to be filed; and on motion of said respondents, by their attorney, it is ordered that a supersedeas be awarded staying further proceedings on the judgment for peremptory mandamus herein.

Said supersedeas bond is in words and figures following, to wit:

37 Know all men by these presents, That we, William Hager, Louis Houck, and Samuel Hitt, are held and firmly bound unto John T. Hill, relator in case No. 1788, U. S. *ex rel.* John T. Hill *vs.* The County Court of Cape Girardeau County, &c., in the full and just sum of one thousand dollars, to be paid to the said John T. Hill, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this — day of November, in the year of our Lord one thousand eight hundred and eighty-two.

Whereas lately, at the September term, 1882, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between The United States *ex rel.* John T. Hill, relator, and the County Court of Cape Girardeau County and the judges thereof, respondents, judgment was rendered against the said County Court of Cape Girardeau County and the Judges thereof; and the said County Court of Cape Girardeau County and the Judges thereof, respondents, having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said John T. Hill, relator, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such that if the said County Court of Cape Girardeau County and the Judges thereof shall prosecute said writ to effect, and answer all damages and costs if

[they] fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

WILLIAM HAGER, [SEAL.]
Presiding Judge.
LOUIS HOUCK. [SEAL.]
SAMUEL HITT. [SEAL.]

Approved by—
SAMUEL TREAT, *Judge.*

38 [Endorsed:] No. 1788. United States circuit court, eastern district of Missouri. United States *ex rel.* John T. Hill *vs.* County Court of Cape Girardeau Co. Copy of bond. $1,000 X. Filed 7th day of Dec., 1882. M. M. Price, clerk.

39 UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true and complete transcript of the record in case No. 1788 of United States *ex rel.* John T. Hill, relator, against The County Court of Cape Girardeau County, and William Hager, Samuel Hitt, and Robert Snider, respondents, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this 11th day of December, in the year of our Lord eighteen hundred and eighty-two.

[Seal of the United States Circuit Court, Eastern District of Missouri.]

M. M. PRICE,
Clerk of said Court,
By A. P. SELBY, *Deputy.*

40 [Endorsed:] No. 1788. United States circuit court, easter district of Missouri. United States *ex rel.* John T. Hill against The County Court of Cape Girardeau County and the Judges thereof. Duly certified transcript in the above-entitled cause.

Endorsed on cover: E. Missouri C. C. U. S. No. 215. The County Court of Cape Girardeau County, Mo., and William Hager, Samuel Hitt, and Robert Snider, the judges thereof, plaintiffs in error, *vs.* The United States *ex rel.* John T. Hill. Filed 10th April, 1883.

118-C

IN THE SUPREME COURT

OF THE UNITED STATES,

OCTOBER TERM, A. D. 1836.

THE COUNTY COURT OF CAPE GIRARDEAU COUNTY, MISSOURI, AND WILLIAM HAGER, SAMUEL HITT AND ROBERT SNIDER, THE JUDGES THEREOF,
Plaintiffs in Error,

AGAINST

THE UNITED STATES EX REL. JOHN T. HILL,
Defendant in Error.

No. 818.

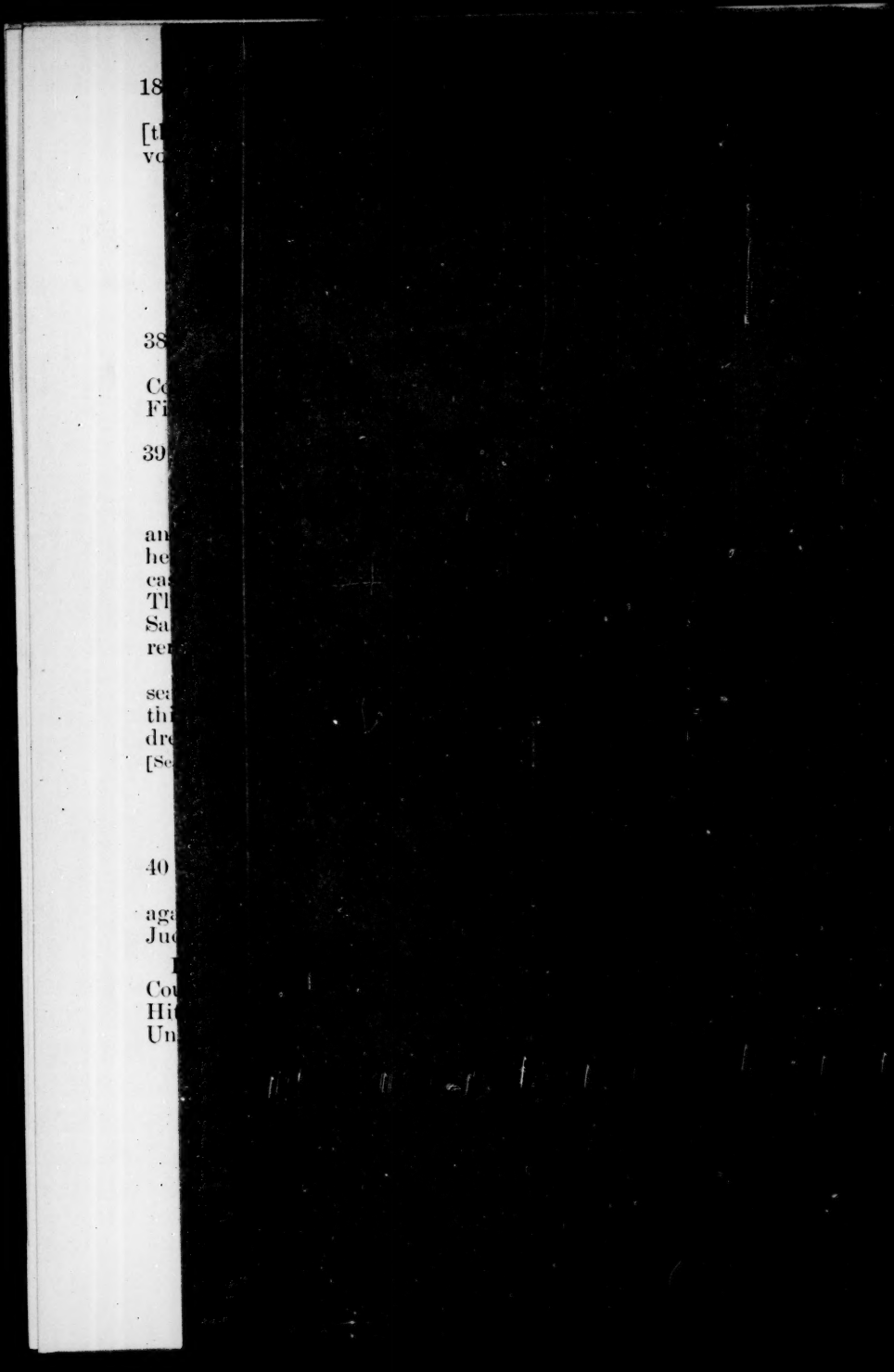
Statement, Assignment of Error and Brief.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

R. B. OLIVER, Attorney for Plaintiff in Error.

J. B. HENDERSON and J. M. LEWIS. Attorneys for Defendant in Error.

Press of the Missouri Cash-Book,
Jackson, Missouri.



IN THE SUPREME COURT

OF THE UNITED STATES,

OCTOBER TERM, A. D. 1885.

THE COUNTY COURT OF CAPE GIRARDEAU COUNTY, MISSOURI, AND WILLIAM HAGER, SAMUEL HITT AND ROBERT SNIDER, THE JUDGES THEREOF, *Plaintiffs in Error*,

AGAINST

THE UNITED STATES EX REL. JOHN T. HILL, *Defendant in Error*.

No. 215

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

Statement and Abstract of Record.

The defendant in error recovered judgment in the United States Circuit Court for the Eastern District of Missouri on the 7th day of April, A. D. 1881, for the sum of $6,659.80 against the County of Cape Girardeau. This judgment was upon certain coupons detached from bonds issued by the County Court of said County on the 15th day of July, 1869, for and in behalf of Cape Girardeau Township, in said

RETURN TO WRIT OF ALTERNATIVE MANDAMUS.

In the Circuit Court of the United States for the Eastern District of Missouri. Sept. Term, 1882.

The United States ex rel. John T. Hill, Relator,
vs.
The County Court of Cape Girardeau and the Judges Thereof, Respondents. } No. 1788.

Now come the respondents and, by leave of the court, make their return to the alternative writ of mandamus herein.

Respondents respectfully show that it is manifest from the record herein, and in the cause to which this proceeding is auxiliary, that the coupons merged in the relator's judgment were detached from bonds issued and delivered on the 15th of July, A. D. 1869, by the county of Cape Girardeau, for the township of Cape Girardeau, in said county, without other authority of law than that recited upon the face of each of the bonds, from which said coupons were detached.

Respondents respectfully show that an act, entitled an act to amend an act entitled an act to facilitate the construc-
12 tion of railroads, &c., in the State of Missouri, approved March 10, 1871, was, by general law of the State of Missouri, incorporated in the general statutes of said State, known as Wagner's Statutes, and was there designated as part of article 11 of chapter 37, entitled corporations.

That said article No. 11, and said chapter 37 of said general statutes, were, by secs. 3160, 3164, and 3168 of the revised statutes of Missouri of 1879, and by other general laws, repealed. That respondents recognize the fact that the repeal of the act of March 23, 1868, was, under the decisions of the Supreme Court of the United States, an impairment of relator's contract, and, therefore, here offer to comply with the provisions of said law by duly levying a tax upon the real estate ——— to taxation in the township of Cape Girardeau aforesaid, in an amount sufficient to pay re-

lator's judgment, interest, and costs; but respondents respectfully show that, under the general laws of the State in force at the date of relator's judgment, and still in force, in the State of Missouri, respondents have no power or authority to levy taxes upon personal property or merchants'
13 license in the township of Cape Girardeau aforesaid, for the purpose of paying relator's judgment, because the only law authorizing such levy was made after the date of relator's contract, and had been duly repealed prior to the date of relator's judgment herein involved.

By HENRY A. CUNNINGHAM, Their Attorney.

On the same day the defendant in error filed his demurrer to said return as follows:

DEMURRER TO RESPONDENT'S RETURN.

U. S. ex rel. John T. Hill

vs.

The County Court of Cape Girardeau County.

Now comes the relator and demurs to the return of respondents in this case, and says that said return constitutes no defence to the application of relator for a pre-emptory writ.

And further, he says that said return is frivolous and wholly insufficient, and constitutes no reason or excuse by respondent for failing to comply with the orders of this
14 court requiring respondent to levy a tax on the real and personal property of the township to pay his judgment.

J. B. HENDERSON,
For Relator.

On the 2d day of November, 1882, the said circuit court sustained said demurrer to the said return and ordered a pre-emptory writ of mandamus against plaintiffs in error. From these rulings of said circuit court the plaintiffs in error have prosecuted this writ, and asks this court to review

the said rulings to wit, the overruling of plaintiff's motion to quash the alternative writ and sustaining defendant's demurrer to plaintiff's return to said alternative writ.

ASSIGNMENT OF ERROR.

IN THE SUPREME COURT OF THE UNITED STATES, OCT. TERM, 1885.

The County of Cape Girardeau, Missouri, and William Hager, Samuel Hitt and Robert Snider, the Judges thereof, Plaintiffs in Error,
against
The United States ex rel. John T. Hill, Defendant in Error.

Now come the said plaintiffs in error and say that in the record and proceedings had in the above entitled cause in the United States circuit court for the Eastern District of Missouri and in the judgment rendered therein by said circuit court there was manifest error committed to the prejudice of these plaintiff's and for such error assigns:

1st. That the said circuit court erred in refusing to sustain the motion of plaintiffs in error to quash the alternative writ of mandamus.

2d. That the said circuit court erred in sustaining the demurrer of defendants in error to the return of plaintiffs in error to said writ of alternative mandamus.

3d. That said circuit court erred in its judgment directing the issuance of a peremptory writ of mandamus requiring plaintiffs in error to levy a tax upon *the personal property of the municipal township* of Cape Girardeau to pay the said judgment of defendant in error.

STATEMENT OF POINTS AND BRIEF.

An examination of the record in this case will show that defendant in error recovered in the circuit court for the Eastern District of Missouri a judgment on the 7th day of

April, 1881, against Cape Girardeau county for the sum of $6,659.80. That said judgment was upon coupons detached from bonds issued by said county July 1st, 1869, under the provisions of an act entitled "an act to facilitate the construction of railroads in the State of Missouri," approved March 23d, 1868, and known as the "township aid act."

The bonds were issued by said county in behalf of Cape Girardeau township in pursuance of a majority vote of those voting at an election held in said township, as provided by said act and in payment for a subscription to the stock of the Cape Girardeau and State Line Railroad Company.

That an alternative writ of mandamus was issued on the 18th day of May, 1882, commanding plaintiffs in error to levy and cause to be collected in the same manner as county taxes, a special tax on all the real estate and personal property in said township, including all statements of merchants doing business within said township, for the payment of said judgment and costs.

To this alternative writ a motion to quash was filed by plaintiffs in error, which was by the circuit court overruled. Plaintiffs in error then filed their return to said writ (Printed Transcript, p. 8,) in which they offered to comply with the *provisions of the law authorizing the issuance of said bonds and coupons,* by duly levying a tax upon all the REAL ESTATE in said township subject to taxation, in an *amount sufficient* to pay relator's judgment, interest and costs; but that they had *no power* or authority to levy taxes upon *personal property* or *merchants' statements* in the township of Cape Girardeau for the purpose of paying said judgment, because the only law authorizing such levy was made *after the date* of the issuance of the bonds or contract herein, and moreover it had been duly repealed *prior* to the date of said judgment.

ARGUMENT AND BRIEF.

The record then presents for the consideration of this court the following questions :

1st. Whether such taxes shall be levied upon real estate alone, as is authorized and required by sec. 2 of the act of 1868, being the act under which the bonds and coupons were issued, or upon both the real estate and personal property as is authorized by said sec. 2 after its amendment in 1871, which amendment was subsequent to the issuance of the bonds and coupons merged in the judgment?

2d. If the act of the General Assembly of Missouri approved March 10th, 1871, (amending sec. 2 of the act of 1868) ever had any effect upon bonds that were issued prior to its approval, has not the act (1871) been repealed, and was it not repealed prior to relator's judgment?

I. Plaintiffs in error insist that under the act of 1868, and the construction placed upon it by this court, the State of Missouri authorized the township of Cape Girardeau to enter into contract with the holders of the bonds issued in behalf of said township. In other words, the act of 1869 entered into and became a part of the contract. Section 1 of said act is as follows:

"SECTION 1. Whenever twenty-five persons, tax-payers and residents, in any municipal township, for election purposes, in any county in this state, shall petition the county court of such county, setting forth their desire, as a township, to subscribe to the capital stock of any railroad company in this state, building or proposing to build a railroad into, through, or near such township, and stating the amount of such subscription, and the terms and conditions on which they desire such subscription shall be made, it shall be the duty of the county court, as soon as may be thereafter, to order an election to be held in such township, to determine if such subscription shall be made; which election shall be

conducted and returns made in accordance with the law controlling general and special elections; and if it shall appear, from the returns of such election, that not less than two-thirds of the qualified voters of such township voting at such election are in favor of such subscription, it shall be the duty of the county court to make such subscription in behalf of such township, according to the terms and conditions thereof, and if such conditions provide for the issue of bonds in payment of such subscription, the county court shall issue such bonds, in the name of the county, with coupons for interest attached; but the rate of interest shall not exceed ten per cent. per annum; and the same shall be delivered to the railroad company."

Section 2 of the act of 1868, being the law when the bonds were issued, is as follows:

"SECTION 2. In order to meet the payments on account of the subscription to the stock, according to its terms, or to pay the interest and principal on any bond which may be issued on account of such subscription, the county court shall, from time to time, levy and cause to be collected, in the same manner as county taxes, a special tax, which shall be levied on all the real estate lying within the township making the subscription in accordance with the valuation then last made by the county assessor for county purposes."

Thus it appears that the contract between the tax-payers of Cape Girardeau township and the relator herein was to the effect that their *real estate alone* in said township should be charged with the payment of said bonds, and that the personal property therein situate should not be charged for the payment of any part of the same. With this contract in their face a majority of those voting on the proposition voted for the issuance of said bonds. Such was the construction placed upon this act by the Supreme Court of Missouri just about the time the bonds in this suit were issued. Judge Wagner, speaking for the court in the case of

the State of Mo. ex rel. N. M. Cent. R. R. Co. vs. Linn County Court, 44 Mo., at page 511. says : "The provision in the law (sec. 2, 1868) requiring that the taxes should be based *exclusively on real property* is more in the *nature of assessments for benefits than general taxation.* It is a common mode and the general practice, when authorizing local improvements to be made, to cause the expense to be *assessed* upon the owners of *real estate* in the immediate vicinity of the improvements, on the ground that such real estate will be immediately and principally benefitted thereby. The *lands* are adjudged to be benefitted by the improvements, and are taxed in proportion to the amount of such benefit, *and the whole tax and expense is levied upon them.* The construction of a railroad through a township is calculated to permanently increase and enhance the value of *all the lands* in that township, and hence the principle applies in the fullest extent. It is *the land which derives the permanent advantage, while personal property may not be affected.*"

The principle is identical with that rule of law authorizing a city to assess benefits to the owners of lots fronting on streets and the creation of draining districts to relieve swamps, marshes and other low lands of their stagnant water.

The assessment is usually made with reference to the benefit to property, and it is difficult to frame or to conceive of any other rule of apportionment that would operate so justly and equally in all like cases.

Uhrig vs. St. Louis, 44 Mo., 458.
Egyptian Levee Co. vs. Hardin, 27 Mo., 695.
Cooly on Const. Lim., star page 506, 7, 10 and 11, and cases cited.
Sedgwick on Stat. and Const. Lim., 512,-3, 554, 557.

This act (1868) then entered into and became part of the contract, and the Legislature of Missouri could not by subsequent repeal deprive defendant in error of his rights under it; nor could the legislature by amendmentof that act enlarge, modify or change its terms by making personal

property liable to taxation or in any manner deprive the tax-payers of said township of their rights under the original act. The provision of the Federal Constitution that no State shall pass a law impairing the obligation of contracts, is a limitation upon the taxing power of a State, as well as upon all its legislation, whatever form it may assume. If the General Assembly of Missouri could in 1871 amend the act of 1868 so as to make personal property pay a portion of the debt specifically laid upon the real estate in said township, then it could and did (to the extent of the value of the personal property in said township) create an indebtedness or charge against the personal property therein. If it could legally destroy a right the payer had in said contract then it could legally destroy the rights of the payee of the bond. The language of the Federal Constitution, sec. 10, article I, is: "That no State shall pass a law impairing the obligation of contracts." It is the rights of *both* parties to the contract that is protected and not the payee's alone.

The act of 1868 in no just sense made the township of Cape Girardeau the agent of the State, or vested it with any part of the machinery of the State government.

It was a proposition vesting the township with the power upon a certain contingence to enter into a specific contract, for the private benefit of the real estate owners therein with the holders of the bonds. Section 5 of said act is declaratory of this. It is as follows:

SECTION 5. In all cases hereafter, where a railroad or branch railroad in this state shall be built, in whole or in part, by subscriptions to its stock, by counties, cities, or townships, the proceeds of all state and county taxes, levied upon such railroad company or branch so built, or the property thereof, shall be paid into the treasury of the counties where collected, and the county treasurers shall apportion the same, according to their several subscriptions, to such counties, cities, or townships so subscribing stock, until the

whole amount of such subscription is refunded to them; and such sums so apportioned shall be paid over to the county or city treasurer, and applied to the payment of the interest and principal of the bonds issued by such county or city on account of their subscription stock, as aforesaid, if any are outstanding, and if not, it shall by them be placed to the credit of the school fund in such county, city, or township.

In voting this indebtedness upon themselves the tax-payers of said township were led to suppose that they could in no event become losers. 1st, because the State had contracted with them that their personal property should not be taxed, and had permitted them to contract with the holders of their bonds to the same effect; 2d, that the tax provided for would not only discharge the debt but ultimately secure *to them in all times to come "the proceeds of all State and County taxes levied upon such railroad"* for the following purposes: First, the payment of the principal and interest of the bonds issued, and second, to their school fund of said township, thereby surrendering to the township the State and county's right to tax, and guaranteeing to the township this special franchise if it would only accept the State's offer. And the grant of this franchise by the act of 1868 can no more be resumed by the Legislature, or its benefits diminished or impaired without the consent of the grantees or the makers of said bonds than any other grant of property or valuable thing.

Cooly on Constitutional Limitations, star page 278, and cases cited.

Sloan on Pacific R. R., 61 Mo., 24.

Thus we see the State through its Legislature of 1868 authorized the tax-payers of Cape Girardeau township to enter into a contract with the holders of its bonds upon the *express condition* that if said township would assist in building a railroad—a benefit to the public—the State would guarantee *that their real estate alone* should be taxed and that their

personal property, as it is not specially benefitted, should not be so taxed. That the legislature of a State can surrender its sovereign power to tax certain property, rights, or franchises is no longer an open question.

Darmouth College vs. Woodward, 4 Whet.

If the Legislature in 1871 had the power to change the contract (acts of 1868) so as to make personal property liable to taxation for the payment of relator's bonds, is there any limit in this regard? May not any other change be made? Could not the Legislature as well and more justly have said that only new improved real estate such as have brick houses upon it should be taxed for the payment of said bonds? In Murray vs. Charleston, 96 U. S., 432, this court in substance said: a Legislative act which assumes to repeal *any tax* law in force when relator's bonds were issued, and under which he was entitled to enforce payment, is as to him *unconstitutional* and void.

The court in this case says (p. 448) that "no municipality can relieve itself from performing to the letter all that it has *expressly* promised to its creditor."

Here the municipality does not seek to avoid what it has *expressly* promised, but in attempting by mandamus to compel the county court to levy a tax on the personal property of the township, the creditor endeavors to make property liable to pay a debt the municipality *expressly* promised *should not* be so made liable.

In the same case the court again says (see p. 445) "the truth is, states and cities, when they borrow money and contract to repay it with interest, are not acting as sovereignites. They come down to the level of ordinary individuals. Their contracts have the same meaning as that of similar contracts between private persons."

Conceding this, the township ought to have the same con-

stitutional protection as a "private individual" from any additional burthen the Legislature may attempt to place upon it. The township being a mere "private individual" when borrowing money, can very properly say: "When these bonds were issued, and when the people voted upon the matter, that it was 'nominated in the bond' that the real estate of the township alone should be liable to pay the bonds, and nothing else, and that the subsequent attempt of the Legislature to make other and different property liable impaired the obligation of the contract."

Again, under the constitution of Missouri the Legislature could not authorize the township to become a stockholder or loan its credit to any company unless two-thirds of the qualified voters assented thereto at a regular or special election. (Const. of 1865, art. XI., § 14.) In the bill of rights of the same constitution it is declared that "no law impairing the obligation of a contract, or retrospective in its operation, can be passed."

The question of subscribing to the capital stock of the railroad having been submitted to the people under the law as it stood in 1869, making the debt a charge on the realty of the township alone, under the constitution another or different liability could not be placed on the township without a popular assent. And this case must be distinguished from cases where a subscription is authorized to be made by mere Legislative enactment without the assent of the people. In such cases the whole subject is under the Legislative control, and the Legislature may from time to time alter, modify or change the property from which the tax is to be raised, providing only that the creditor raises his debt. But in Missouri under the constitution of 1865, the Legislature *absolutely* had no power over the subject, other than to frame a law allowing the people to vote whether under the provisions of the law framed by the Legislature they would or would not subscribe to aid a railroad and only when two-thirds of the voters voted aid, would that aid legally

be extended. The legislature could provide a mode to grant aid, but could not *a priori* grant aid. If it could not directly grant aid by authorizing a levy of a tax on the *realty* of the township without a popular vote in that behalf, how could it grant aid by authorizing the levy of a tax on *personal property* after the vote authorizing a tax on *realty alone?*

The act of 1871, if construed to make the personal property of Cape Girardeau township liable for a debt voted with reference to the realty of the township alone, is in effect the establishment of a pecuniary demand against the personal property of the citizens of that municipal township without their consent, a consent expressly required by the State constitution. Even if the constitutional provision of Missouri did not inhibit such legislation the rule asserted in Massachusetts ought to be upheld as just, that "it is not in the power of the legislature to create a debt from one person to another without the express or implied consent of the person to be charged," and that if the attempt were made "it would not be within the power of any judicial court to enforce such an act."

Haufshire vs. Franklin, 16 Mass., 76-84, cited in Cooley on Taxation, p. 484.

The power to force taxation upon the people for objects not within the ordinary scope of local government is also denied in Maine, Wisconsin, Michigan, Kansas and Illinois.

See Cooley on Taxation, page 484.

And in Kansas where a municipal corporation had issued a bond bearing a rate of interest higher than allowed by law under which the debt was created, it was held that the legislature had no power to validate the bond, because it was in effect making a new contract, to which the county had not assented.

The act of 1871, under which it is sought to make the per-

sonal property of the township liable, is in effect making a new contract to which the township has not assented, and which without that assent constitutionally obtained no Legislature of Missouri could authorize.

Therefore we insist that the court below erred in overruling the motion to quash the alternative writ requiring plaintiffs in error to extend a tax upon the personal property of said township for the payment of said judgment.

II. Granting for the sake of argument that the Legislature of Missouri had the power and the constitutional right to abrogate, change or modify the laws of 1868 and the contract made under it, yet the trial court committed error in sustaining the demurrer to the return of the plaintiff in error. The return affirmatively asserts that the coupons merged in the relator's judgment were detached from bonds issued and delivered on the 15th day of July, A. D. 1869, by the County Court of Cape Girardeau County for the township of Cape Girardeau, in said county, without other authority of law than that recited upon the face of each of the bonds from which said coupons were detached. The act making personal property liable to taxation did not become a law until the 10th day of March, 1871, or nearly two and one half years after the relator herein had accepted said bonds.

Acts of 1871, page 55.

By general law of the State of Missouri entitled "an act declaring Wagner's edition of the statutes of Missouri *prima facie* evidence of the statute law, and providing for the purchase and distribution thereof by the State" and approved March 16th, 1870, it became the duty of the Hon. David Wagner (who was at that time a member of the Supreme Court of the State of Missouri) to include in said edition of said statutes "*all the general laws*, and amendments

thereto, passed at the present session of the General Assembly."

Section 1, Laws 1870, p. 161.

Pursuant to the authority of the above recited act of the General Assembly of Missouri we find that the original act of 1868 (under which said bonds were issued) and known as the "Township aid act," is included in said edition of Wagner's statutes at pages 313 and 314, vol. I—being a part of the *general* law of said State, as part of article 2 of chapter 37, entitled Corporations.

Wagner's Stat. of Mo., 1870, pp. 313 and 314.

By virtue of authority in sections 1 and 2 of an act entitled "an act to provide for the purchase of twenty-five hundred copies of Wagner's statutes, and for distributing the same," approved March 30th, 1872, Judge David Wagner was authorized to *revise* said statutes, and said revised edition was to contain *"all the general acts passed at both sessions of the Twenty-sixth General Assembly, placed under their appropriate chapters and sections."*

Laws of Mo., 1872, p. 171.

On July 5th, 1872, the Judges of the Supreme Court of Missouri filed with the Secretary of State and caused to be printed on the first page of vol. II of Wagner's statutes of 1872, after their examination of the work, the following acceptance of said statutes:

JEFFERSON CITY, Mo., July 5th, 1872.

We hereby approve the statutes revised by Judge David Wagner, now being issued from the press.

WASH ADAMS,
P. BLISS,
Judges of the Supreme Court.

In Wagner's revised statutes of Missouri, 1872, art. II., chapter 37, designated Corporations, at page 313, § 52, we

find the act approved March 10th, 1871, making personal property liable to taxation incorporated.

Wagner's Stat. of Mo., 1872, p. 313.

From the above recited laws we find that both the Legislative and Judicial departments of the State of Missouri have construed the act of 1868 and the act of 1871 amendatory of the act of 1868 as *general laws* and not local laws.

In 1879 the Legislature of Missouri again revised the statute laws of that State. Section 3154, art. 5, chap. 46, vol. I of said revised statutes is as follows:

SEC. 3154.—The revised statutes shall contain all acts revised and amended or enacted during the present session of the general assembly, of a general nature, except as hereinafter excepted, and all other acts and laws of a general nature which were in force at the commencement of the session, and not expressly repealed, nor repugnant to the provisions of any act passed at the present session, and continued in force by their own provisions.

Sec. 3160 of the same chapter and volume is as follows:

SEC. 3160.—All acts of a general nature, revised and amended and re-enacted at the present session of the general assembly, so soon as such acts shall take effect, shall be taken and construed as repealing all prior laws relating to the same subject, but the provisions of the revised statutes, so far as they are the same as those of prior laws, shall be construed as a continuation of such laws and not as new enactments.

Sec. 3163 of the same article and chapter authorizes the *committee on revision* to prepare *references to the decisions of the Supreme Court construing the various sections*, acts and statutes embraced in said revision of 1879.

Sec. 3167 provides for the authentication of the revised statutes as follows:

SEC. 3167.—As soon as any form of the revised statutes shall have been put in type, a proof sheet thereof shall be furnished to the committee and secretary of state, who shall carefully examine the same and make all corrections therein, and such proof sheets of new or revised acts shall be compared with the original rolls, and when such comparisons and corrections are fully made, and said statutes printed, said secretary and the chairman of said committee shall certify that the same have been examined and compared with such original acts, and that the same are true and correct copies thereof as passed and remaining in the office of the secretary of state, and that the revised statutes as thus published, and all the laws as therein contained, are true copies of the existing laws of the State of Missouri, of a general nature, and they shall deposit a copy of said revised statutes so certified in said secretary's office, which shall be *prima facie* evidence of such statutes. Such certificate shall be printed in each copy of the revised statutes, and every copy so printed, containing such certificate, may be used in evidence without other or further proof or authentication.

Revised Stat. of Mo., 1879, vol. I, chap. 46, article 5, § § 3155, 3160, 3163, 3167.

In revising the statutes of Missouri in 1879 the Legislature, it will be noticed, had under consideration the corporation law of the State and eliminated the whole of the act of 1868, as also that of March 10th, 1871, which last two acts it will be remembered were in the revision of 1872, being part of article 2, chapter 37, Wagner's statutes, and under the authority given the committee by sec 3163 *supra*, the reason is given why said act of 1868 and the amendment thereto in 1871 was not incorporated in the revision of 1879. In the reference to section 4290 of said statutes it is said: "The following cited acts in relation to the ISSUE, funding and compromising of county and other municipal bonds have been passed and repealed or otherwise held invalid * * * * (2) and approved March 23d, 1868,

(laws 1868, p. 92) since declared unconstitutional by the Supreme court."

State ex rel. Woodson vs. Brassfield, 67 Mo., 331.
Webb vs. Lafayette County, 67 Mo., 353.
Ranney vs. Bader, 67 Mo., 476.
II. Vol. Rev. Stat. Mo. '79, art. I, chapter 83.

There can be then no room to doubt that the Legislature of Missouri of 1879 in refusing to incorporate the act of 1871 in the revised statutes of the State of 1879 thereby concurred in the construction placed upon said act by the Supreme Court of said State in that it was null and void as well as the act to which it was amendatory.

In the construction of statutes it has been said that a subsequent statute revising the whole subject matter of a former one and evidently intended as a substitute for it, although it contains no express words to that effect, must on the principals of law as well as reason and common sense operate to repeal the former.

Bartlet vs. King, 12 Mass., 537.
Nichols vs. Squire, 5 Pick., 168.
Com. vs. Cooley, 10 Pick., 37.
Smith vs. Smith, 14 Mo., 152.
State vs. Roller, 77 Mo., 120.

Nor is it any answer to reply, that the act of 1868 was also repealed and that it might as well be argued that therefore the bonds could not be collected. The act of 1868 was a part of the contract entered into by the county on behalf of the township and the holders or purchasers of the bonds, but the act of 1871 was no part of that contract as the bonds were issued long *prior* to the passage of said act—and a repeal of the act of 1871 in no way deprives them of any vested right possessed or acquired by or under the act of 1868, and with reference to which alone they bought.

So that when the return in this case was made in the court below, that the act of 1871 had been repealed the plaintiff in error had as authority for such plea the Legislature ~~ture~~ constructed, and the judicial construction that had been given to said act by the Legislature and Supreme Court of Missouri.

For these reasons we ask that the case may be reversed.

Respectfully Submitted,

R. B. OLIVER,

Attorney for Plaintiff in Error.

118-68

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1885.

THE COUNTY COURT OF CAPE GIRARDEAU COUNTY AND THE JUDGES THEREOF,
Plaintiffs in Error.

vs.

THE UNITED STATES EX REL. JOHN T. HILL,
Defendant in Error.

No. 215.

STATEMENT AND BRIEF OF DEFENDANT IN ERROR.

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No. 215.

STATEMENT OF THE CASE.

On April 7, 1881, one John T. Hill, of New Jersey, obtained a judgment for $6,659.80, in the Circuit Court of the United States, at St. Louis, against Cape Girardeau County, on some coupons which had been executed by the County Court of said county as a part of certain bonds issued to the Cape Girardeau State Line Railroad Company by said county for and in behalf of Cape Girardeau Township, under the act "to facilitate the construction of

Railroads in the State of Missouri," approved March 23, 1868.

On May 9, 1882, during a term of said court Hill made application to the Court for an alternative writ of *mandamus* against the Judges of the County Court, to enforce the collection of said judgment. (Record, pp. 3, 4).

On the same day an order was made by the Court granting said writ (Record, p. 4) and on May 10, 1882 an alternative writ was issued in pursuance of said order commanding the judges of the County Court to levy a tax on the real and personal property of the said township to pay said judgment and costs (See Record, pp. 5, 6).

On May 15, 1882, this writ was served on the judges, and at a subsequent term of the Court, to wit: on September 18, 1882, the judges filed a motion to quash the writ alleging for cause that the Circuit Court had no authority to collect for the payment of said judgment a tax on personal property. (Record, pp. 6, 7).

In this motion it is argued that the original act of March 23, 1868, provided that the township bonds should be paid by a tax on real estate, that the bonds in this case had been issued on July 1, 1869, before the passage of the amendatory act of March 10, 1871, which authorized and required for their payment a tax on personal property and merchants' licenses equally with real estate, and that the amendatory act had been repealed by the Revised Statutes of 1879 and previous to the rendition of the judgment in this case.

This motion was overruled by the court on the ground that the amendatory act was still in force and not repealed—and the respondents were ordered to make their return to the writ (See Record, p. 7); and on November 1, 1882, the respondents filed a return setting up substantially the same facts as contained in said motion. They, in this return, insist that the original act and the amendatory act of March 10, 1871, had both been repealed in 1879 by sections 3160, 3164 and 3168 of the Revised Statutes

of Missouri, and that the repeal of the amendatory act before the date of judgment removed the personal property from the levy. (Record, p. 8.)

On the same day the relator, Hill, demurred to this return and prayed a peremptory writ and the demurrer was sustained and the writ ordered. (See Record pp. 9 and 10.) At the same time the relator, having ascertained that there were moneys in the county treasury, previously collected from the people of the township, by order of the county court, to pay relator's coupons and held subject to the order of the said county court, filed his motion to compel the county court to pay the same to plaintiff to the extent of his said judgment. (Record, p. 10).

And on November 4, 1882, the Circuit Court, setting aside previous orders in the case, proceeded to order the County Court when duly notified thereof, to pay relator "whatever amount of money may now (then) be and remain in the treasury of said county to the credit of said township applicable to the payment of the judgment herein," subject to the terms named in the order (see Record, p. 13), and that respondents should make their return in reference to payment of the money in thirty days after service of the order on them; and it was further ordered that for the payment of any amount of the said judgment remaining unsatisfied after paying the money on hand as aforesaid, the respondents should, at the next May term of the County Court, in the year 1883 (the usual time of levying State and county taxes), levy a special tax on the real and personal property, including merchants' licenses in said township.

On November 14, 1882, a writ in pursuance of this order issued out of the Clerk's office commanding the respondents to pay to relator or his attorney, the money in the treasury subject to respondents' order if any, belonging to the township and applicable to the payment of relator's judgment, and that they levy a tax as aforesaid to pay the remainder if any, of said judgment.

This writ was served on each of respondents on November 20, 1882, by the marshal of the United States, and no compliance therewith or return thereto has ever been made by the respondents.

It is to reverse this proceeding that respondents on December 20, 1882, sued out a writ of error, and by giving a bond only for costs, have since held the money of the township and refused to levy the tax.

ARGUMENT.

I.

The only pretense of error urged against the proceedings of the lower court, is found in the fact that in ordering the tax to pay the judgment, the court included personal property and merchants' licenses with the real estate in the township.

It is true that the original "act to facilitate the construction of railroads in the State of Missouri" (see Session Acts of Missouri, Adjourned Session of 1868, page 92-3) provided in its second section that to pay the bonds and coupons issued under the act the county courts should levy a tax on the real estate of the township.

But on March 10, 1871 (see Session Acts of 26th General Assembly, Regular Session of 1871, p. 55), the original act was so amended as to require the County Courts to levy the tax for the payment of such bonds and coupons, on real and personal property, including merchants' licenses.

It is admitted that the bonds in this case were issued prior to the passage of the amendatory act of 1871, but relator insists that said act was in full force when his judgment was obtained, in April, 1881, and at the time when the peremptory *mandamus* complained of was issued and served.

The General Statutes of Missouri were revised by the Legislature in 1865, and in 1866 the revision was published by authority of the General Assembly. In this revision the entire law governing private corporations was published in nine divisions, under title No. 24, beginning on page 326 and ending on page 372. The general caption or heading was, "Of Private Corporations."

The act under which these bonds were issued was passed as stated in 1868, under the general caption or heading "RAILROADS: *Construction of.*"

This act contains no provision whatever touching the formation of corporations, their duties or responsibilities. It provided only the mode by which municipal townships could issue bonds to existing railroad companies and the means by which those bonds could be paid.

In 1869–70 David Wagner, then a judge of the Supreme Court of Missouri, as an enterprise of his own and without authority from the State, caused to be published a compilation of the statute law of Missouri, in which he added to the revision of 1865 the Session Acts of a general nature subsequently passed, and for convenience, undertook to arrange the subjects in alphabethical order.

The Legislature in 1870 passed an act making "Wagner's Statutes" evidence in the Courts of the State, but the revision of 1865 remained as the authorized compilation of the statute law of the State.

In the revision of 1865 there was no law under the general title of "Railroads." And no other law after that time up to the period of Wagner's publication contained such title except the act of 1868 under which these bonds were issued. Hence in Wagner's compilation he placed the act of 1868 as a supplement under the caption of "Corporations" and under the division thereof entitled "Railroad Companies." In the preface to his work he says, "I had no authority to alter the text in any manner," and hence he adds, "the source whence the matter is taken, whether from the statutes or the session acts as indicated at the beginning of each section, so that at a glance it will be seen where the original may be found." He therefore places before the words of the text of this act, "Acts 1868, p. 92."

In 1879 another revision of the statute laws was made, of which section 3160 reads as follows: "All acts of a general nature revised and amended and re-enacted at the present session of the General Assembly, so soon as such acts shall

take effect, shall be taken and construed as repealing all prior laws relating to the same subject; but the provisions of the Revised Statutes, so far as they are the same as those of prior laws, shall be construed as a continuation of such laws, and not as new enactments." Section 3161 provides that all acts or parts of acts of a general nature in force at the commencement of the present session of the General Assembly, and not repealed, shall be and the same are hereby continued in full force and effect, unless the same be repugnant to the acts passed or revised at the present session."

Revised Stats. 1879, vol. 1, p. 529.

Now it is urged by plaintiff in error that inasmuch as the general corporation law was "revised and amended and re-enacted" in 1879 the act of 1868 was repealed. This argument is predicated on the false assumption that because Wagner placed said act under the title of "Railroad Companies" it became a part of the corporation law of the State.

In the first place, it was never designed by Wagner in his compilation to treat the act of 1868 as a part of the corporation law of the State. It was so placed for mere convenience of reference, and because there was no general title "Railroads."

Second. Wagner's compilation was never adopted by the Legislature as a substitute for the revision of 1865, and hence his classification of the laws was wholly without sanction.

Third. The laws upon the subject of corporations did not "relate to the same subject" as the act of 1868 and hence the act of 1868 was not repealed.

Fourth. The act was not repealed because the General Assembly in making the revision of 1879 expressly declared that this act of March 27, 1868, was not "revised, amended and re-enacted" nor in any manner touched because the

Supreme Court of Missouri, 67 Mo. 331, had declared it unconstitutional.

Rev. Stats. 1879, Vol. 2, p. 849–50, note a (2).

Fifth. To show conclusively that the act was not repealed in 1879, the General Assembly on March 24, 1885, recognized its existence on the statute books as a valid law and passed an act repealing the amendatory act of March 10, 1871, leaving in force the original act of 1868.

Laws of Mo. 1885, p. 93.

Sixth. The courts of Missouri have uniformly held the act of 1868 and the amendatory act of 1871 to be in force. The opinion of Circuit Judge McCrary in Foote *v.* County Court of Howard county was rendered on the belief and admission of counsel that the act of 1868 had been expressly repealed by Legislature. On the subsequent publication of the second volume of the revision it appeared that the act was unrepealed, and hence a note was appended to the report of the case correcting the opinion. The judgment of the court was immediately changed, and the existence of the law has been recognized by the judicial and legislative authorities of the State up to March 24, 1885.

1 McCrary's R. 218.

II.

The power of the Legislature to pass the amendatory act of March 10, 1871, subjecting personal property to the payment of a pre-existing debt is fully settled by the adjudications of the Supreme Court of Missouri.

"The taxing power belongs to the Legislature, and is

subject to no restrictions or limitation outside of the constitutions of the States and the United States."

H. & St. Jo. R. R. Co. *v.* State Board of Equalization, 64 Mo. 294.

"The Legislature can authorize or direct the levying of taxes to pay a pre-existing debt."

St. Louis *v.* Clemens, 52 Mo. 133.

"The power to tax rests upon necessity and is inherent in every sovereignty. In reference to taxation the Constitution is not a grant of power but a limitation."

Glasgow *v.* Rowse, 43 Mo. 479;
St. Louis *v.* Man. Bk. 49 Mo. 574.

"The Legislature may repeal one tax and impose another, or impose other and higher rates of taxation, unless there be some limitation by contract, or by constitutional provision."

St. Joseph *v.* Railr. Co., 39 Mo. 476;
State *v.* Dulle, 48 Mo. 282.

"The right of determining what proportion of the burdens of taxation shall be borne by any individual or class of individuals, must be determined by the Legislature in the absence of constitutional restriction; and the remedy in the case of unjust legislation is to be found among the constituents of the legislators and not in the judiciary."

No. Mo. R. R. Co. *v.* Maguire, 49 Mo. 490.

"The General Assembly determines to what local uses the funds derived from county taxation shall be applied, and its determination is final."

State *v.* St. Louis C. Ct., 34 Mo. 546.